UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

NICHOLAS E. DEAN,

Petitioner,

ORDER ACCEPTING FINDINGS,

v.

CONCLUSIONS, AND

CYNTHIA Y. TAMPKINS, Acting Warden, RECOMMENDATIONS OF UNITED

Respondent.

STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, all the records and files herein, the Report and Recommendation of the United States Magistrate Judge (the "Report" or "R&R"), and Petitioner's Objections ("the Objections"). After having made a <u>de novo</u> determination of the portions of the Report and Recommendation to which Objections were directed, the Court accepts the findings and conclusions of the Magistrate Judge. However, the Court addresses Petitioner's Objections below.

In his Objections, Petitioner contends that the instant Petition is not successive because he is not challenging the same 2007 judgment

that he challenged in the Prior Petition.¹ (Objections at 2-5). Specifically, Petitioner argues that he is challenging an amended judgment because he was re-sentenced on June 7, 2010. (Id. at 2-4). As set forth in the Magistrate Judge's Report, however, Petitioner's resentencing on June 7, 2010 was for Case No. PA055664, not Case No. PA056055, and PA056055 is the judgment he is currently challenging. (R&R at 9). Petitioner contends that his resentencing constitutes an amended judgment in both cases because the trial court determined that the sentence in Case No. PA056055 would run consecutively to the sentence in Case No. PA055664 pursuant to California Penal Code section 669. (Objections at 3).

California Penal Code section 669 states that "[w]hen any person is convicted of two or more crimes, . . . the second or other subsequent judgment upon which sentence is ordered to be executed shall direct whether the terms of imprisonment or any of them to which he or she is sentenced shall run concurrently or consecutively." Here, the trial court in Case No. PA055664 determined that the sentence in Case No. PA056055 would run consecutively to the sentence in Case No. PA055664 pursuant to California Penal Code section 669. (Lodgment 7 at 29-30). The trial court did not, however, alter the sentence in Case No. PA056055 or issue an amended judgment in that case. (Id.). Indeed, the amended judgment issued by the trial court on July 12, 2010 related only to Case No. PA055664. (Lodgment 6 at 29). Because the trial court did not issue an amended judgment in Case No. PA056055, the Petition

on June 26, 2012, the Ninth Circuit denied Petitioner's request for a certificate of appealability in Case No. 09-7320 CAS (SS), where the Court denied Petitioner's Prior Petition on the merits.

challenges the same 2007 judgment as the Prior Petition and is therefore successive. IT IS ORDERED THAT: (1) Respondent's Motion to Vacate is GRANTED IN PART AND DENIED IN PART (Docket No. 18); (2) Petitioner's Motion to Amend is DENIED (Docket No. 20); (3) the Petition is DENIED as successive; and (4) Judgment shall be entered DISMISSING THIS ACTION WITHOUT PREJUDICE. IT IS FURTHER ORDERED that the Clerk serve copies of this Order and the Judgment herein on Petitioner at his current address of record. LET JUDGMENT BE ENTERED ACCORDINGLY. Rhristine a. Smyde DATED: July 2, 2012 CHRISTINA A. SNYDER UNITED STATES DISTRICT JUDGE